

REMARKS/ARGUMENTS

Claims 2-8, 10-16, 18-19, 21-22, 24-25, 27-33, 35, 37-46, 48, 50-52, 59, 63-72 and 74-90 are currently pending in the present patent application. Claims 6, 14, 22, 25, 35 and 46 are amended. Claims 8, 16, 24, 32, 68, 79-80, 82 and 86 are also amended, but in a manner that does not alter their respective scope. In view of at least the following, all currently pending claims are in condition for allowance, and, therefore, the Applicants' attorney requests that the Examiner withdraw all outstanding rejections. *However, if after considering this response the Examiner does not allow all of the claims, the Applicants' attorney requests that the Examiner contact him to schedule a telephone interview to further the prosecution of this application.*

Rejection of claims 3-8, 11-16, 19, 21-22, 24-25, 27-30, 32-33, 35, 37-41, 43-46, 48, 50-51, 59, 63, 65, 67, 76-77 and 79-80 under 35 U.S.C. § 102(e) as being Anticipated by Murphy (U.S. Patent No. 6,564,380)

Claim 6

Claim 6 as amended recites determining whether the user qualifies to receive particular media content, determining whether the user qualifies to access a feature of the media player that enhances the playback of that media content by operating on the media content only within the device of the user and, in response to the determination that the user does qualify to access the feature, allowing the user to access the feature of the media player.

For example, referring to FIGS. 8-12 and paragraphs 89-95 of the patent application, in an embodiment a universal media player can be included in a subscription level and is operable to receive media content in common formats, such as AIFF, MP3 and RealVideo, via streaming. In another subscription level the

user is allowed to access a set of advanced video controls of the media player which control aspects (such as hue and contrast) of how the media content is displayed on the user's device. Access to these advanced video controls enhances the playback of the media content by operating on that media content only within the device of the user. In this way, no additional demand is placed on the provider sending the media content, and the method may be scaled to a larger number of users than would otherwise be possible.

In contrast, Murphy does not disclose determining whether the user qualifies to receive particular media content, determining whether the user qualifies to access a feature of the media player that enhances the playback of that media content by operating on the media content only within the device of the user and, in response to the determination that the user does qualify to access the feature, allowing the user to access the feature of the media player. Referring, *e.g.*, to FIGS. 7-8 and column 13 lines 20-26, Murphy discloses a feature wherein users that request live content may be allowed to access remote camera controls (such as pan, zoom, focus, and selection of multiple camera positions) when receiving that live content. These controls do not enhance playback of content by operating on the media content only within the device of the user; they require that the media content (and, indeed, the facilities by which the content is initially captured) be altered at the server side before being sent to the user's device.

Murphy does not satisfy the limitations recited by claim 6. Applicants' attorney respectfully requests that the Examiner withdraw the rejection.

Claims 3-5, 7-8, 59, 65, 76-77 and 79-80

These claims are patentable at least by virtue of their respective dependencies from claim 6.

Claim 14

Claim 14 as amended is patentable for reasons substantially similar to those discussed with respect to claim 6.

Claims 11-13, 15-16 and 63

These claims are patentable at least by virtue of their respective dependencies from claim 14.

Claim 22

Claim 22 as amended recites receiving access to a feature of a media player that enhances the playback of pre-existing media content, provided that access to the feature is included in a media subscription level.

In contrast, Murphy does not disclose receiving access to a feature of a media player that enhances the playback of pre-existing (*i.e.*, non-live) media content dependent on whether access to the feature is included in a media subscription level. As discussed above with respect to claim 6, Murphy discloses a feature wherein users that request live content may be allowed to access remote camera controls (such as pan, zoom, focus, and selection of multiple camera positions) when receiving that live content. These controls are not available with respect to the pre-existing media content described by Murphy, nor does Murphy contemplate providing enhanced features of a media player that enhances pre-existing media content.

Murphy does not satisfy the limitations recited by claim 22 , and Applicants' attorney respectfully requests that the Examiner withdraw the rejection accordingly.

Claims 19, 21, 24 and 67

These claims are patentable at least by virtue of their respective dependencies from claim 22.

Claims 25 and 35

These claims are patentable for reasons substantially similar to those discussed with respect to claim 22.

Claims 27-30 and 32-33

These claims are patentable at least by virtue of their respective dependencies from claim 25.

Claims 37-41 and 43-45

These claims are patentable at least by virtue of their respective dependencies from claim 35.

Claim 46

Claim 46 as amended recites a program that, when executed by a computer causes the computer to receive access to a feature of a media player that enhances the playback of the media content by operating on the media content only within the computer, provided that the access to the feature is included in the media subscription level.

As discussed analogously above with respect to claim 6, Murphy does not disclose a feature of a media player that enhances the playback of the media content by operating on the media content only within the computer. Murphy does not satisfy the limitations of amended claim 46, and Applicants' attorney respectfully

requests that the Examiner withdraw the rejection accordingly.

Claims 48 and 50-51

These claims are patentable at least by virtue of their respective dependencies from claim 46.

Rejection of claims 86 and 88-90 under 35 U.S.C. § 102(e) as being Anticipated by Yanagisawa (U.S. Pub. No. 2005/0131910)

The Examiner's rejection of claims 86 and 88-90 as anticipated by Yanagisawa under 35 U.S.C. § 102(e) is improper. Title 35 U.S.C. § 102(e) states that a person shall be entitled to a patent unless:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that *an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.* (Emphasis added.)

Applicants' attorney notes that while Yanagisawa claims priority from Japanese PCT application JP02/07802 with a filing date of July 31, 2002, this PCT application was not published in the English language. Because the U.S. filing date of the Yanagisawa patent (January 28, 2005) is later than that of the present application (September 22, 2003, with priority claim to provisional application No. 60413160, filed September 23, 2002), it is not considered prior art with respect to the present application. Furthermore, because the publication date of the PCT application is February 12, 2004, the PCT application is also not prior art with respect to the present application. Therefore, Applicants' attorney respectfully

requests that the Examiner withdraw the respective rejections of claims 86 and 88-90 accordingly.

Rejection of claims 2, 10, 18, 64 and 66 under 35 U.S.C. § 103(a) as being Unpatentable over Murphy in view of Sie et al. (Pub. No. 2003/1236595, hereinafter "Sie")

Applicants' attorney notes that the present application claims priority from provisional application No. 60413160, filed September 23, 2002. As such, Sie is not considered prior art with respect to the present application. Regardless of such priority, these claims are patentable for at least the reasons below.

Claims 2 and 64

These claims are patentable at least by virtue of their respective dependencies from claim 6.

Claim 10

Claim 10 is patentable at least by virtue of its dependency from claim 14.

Claims 18 and 66

These claims are patentable at least by virtue of their respective dependencies from claim 22.

Rejection of claims 31, 42, 52 and 78 under 35 U.S.C. § 103(a) as being Unpatentable over Murphy in view of Holtz et al. (U.S. Patent No. 6,760,916)

Claim 31

Claim 31 is patentable at least by virtue of its dependency from claim 25.

Claim 42

Claim 42 is patentable at least by virtue of its dependency from claim 35.

Claim 52

Claim 52 is patentable at least by virtue of its dependency from claim 46.

Claim 78

Claim 78 is patentable at least by virtue of its dependency from claim 6.

Rejection of claims 68-71, 73-74 and 81-85 under 35 U.S.C. § 103(a) as being Unpatentable over LaRocca et al. (U.S. 6,314,572, hereinafter "LaRocca") in view of Baker et al. (Pub. No. 2001/0049824, hereinafter "Baker")

Claim 73 was previously canceled without prejudice or disclaimer. Applicants' attorney herein presumes that the Examiner therefore intended to reject claims 68-72 and 74-75 rather than claims 68-71 and 73-74. If this was not the Examiner's intention, the Applicants' attorney hereby requests that the Examiner please call Applicants' attorney as soon as possible to discuss the basis of the Examiner's rejection for claim 72.

Claim 68

Claim 68 as amended recites providing a media content provider included in a plurality of content providers a portion of a subscription fee, wherein the portion is determined by the number of times the user accesses the media content from the media content provider.

In contrast, LaRocca does not disclose providing a media content provider included in the plurality of content providers a portion of a subscription fee. On page 12 of the instant Office action, the Examiner asserts that this feature of claim 68 is satisfied by LaRocca's teaching of a user paying a first fee for a base service that would allow the user to access content for that base service after authentication. This is incorrect. LaRocca discloses dependent subscriptions—"only permit[ting] a user to subscribe to particular additional subscription services (extended services) if the user already subscribes to certain other services (base services)." LaRocca, column 3, lines 32-35. LaRocca is concerned only with how and under what circumstances a user may be charged various subscription fees and thereafter gain authorization to receive particular content. It is silent as to any apportionment between separate content providers. In fact, LaRocca is silent as to any payment to content providers whatsoever.

Even if LaRocca is interpreted to teach allocation of subscription fees, however, Baker does not provide the missing disclosure. Referring, *e.g.*, to paragraph [0015], Baker discloses providing revenue to program developers or owners based on "the number of downloads demanded by listeners or viewers." However, Baker does not disclose or suggest a subscription model for media content, and is silent as to any apportionment of fees received therefrom. Baker's treatment of fees for media content is essentially one of consignment. Referring, *e.g.*, to paragraphs [0030]-[0031], buyers are billed for individual pieces of media content and sellers are paid on the same basis, less a transaction fee for the entity maintaining the database of content and tracking its usage. There would be no

motivation for one of ordinary skill in the relevant art to apply the consignment and commission approach of Baker with a subscription model which is, by definition, flatly priced. Even if an attempt was made to combine the teachings of Baker and LaRocca, however, the result would not satisfy the limitations of claim 68.

Neither LaRocca nor Baker, either alone or in combination, disclose or render obvious the limitations of claim 68, specifically, providing a media content provider included in a plurality of content providers a portion of a subscription fee. Applicants' attorney respectfully requests that the Examiner withdraw the rejection.

Claims 69-72, 74-75 and 81

These claims are patentable at least by virtue of their respective dependencies from claim 68.

Claim 82

Claim 82 is patentable for reasons substantially similar to those discussed with respect to claim 68.

Claims 83-85

These claims are patentable at least by virtue of their respective dependencies from claim 82.

Conclusion

The absence of additional patentability arguments should not be construed as either a disclaimer of such arguments or that such arguments are not believed to be meritorious. In light of at least the reasons discussed herein, existing claims 2-5, 7, 10-13, 15, 18-19, 21, 25, 27-31, 33, 37-45, 48, 50-52, 59, 63-72, 74-78, 81, 83-85 and 87-90 and amended claims 6, 8, 14, 16, 22, 24, 32, 35, 46, 79-80, 82 and 86 are in condition for allowance. Favorable consideration and a Notice of Allowance are respectfully requested. Should the Examiner have any further questions about the application, Applicant respectfully requests the Examiner to contact the undersigned attorney at (425) 455-5575 to resolve the matter.

In the event additional fees are due as a result of this amendment, payment for those fees has been enclosed in the form of a check. Should further payment be required to cover such fees you are hereby authorized to charge such payment to Deposit Account No. 07-1897.

Respectfully submitted,

GRAYBEAL JACKSON HALEY LLP

A handwritten signature in dark ink, appearing to read "James J. Carter", is written over a horizontal dotted line.

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